SUPREME COURT, U. S.

No. 375

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

JOSEPH SHARFSIN, P. STEPHEN STAHLNECKER, ROBERT W. ANTHONY, WILLIAM P. O'HARA, and JOHN L. DORRIS, INDIVIDUALLY AND AS COMMISSIONERS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION,
Appellants,

v.

THE PENNSYLVANIA RAILROAD COMPANY,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM

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August 1965

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The Appellee, pursuant to Rule 16, paragraph 1(c), moves that the judgment of the District Court be affirmed on the ground that the questions presented are so insubstantial as not to need further argument.

STATEMENT OF THE CASE

This is an appeal from a judgment of the United States District Court for the Middle District of Pennsylvania enjoining the The Pennsylvania Public Utility Commission ("the PUC") from enforcing an order dated July 9, 1962, requiring The Pennsylvania Railroad Company to restore, within the state, service previously provided by two interstate passenger trains which the Railroad had discontinued pursuant to the provisions of Section 13a(1) of the Transportation Act of 1958 (49 U.S.C. 13a(1)). The order of the PUC was based on the ground that Section 13a(1) was unconstitutional.[1]

Prior to February 1962 the Railroad operated two passenger trains, numbers 638 and 645, over its line between Harrisburg, Pennsylvania, and Hagerstown, Maryland. The trains served primarily as a link in the company's through service between New York and Roanoke, Virginia, via Harrisburg. The two trains, which operated during the middle of the night, stopped enroute at three small towns in Pennsylvania. Of the approximately 20 passengers using each train each day a great majority were through passengers. Of the remaining local passengers only one or two used the trains each day for travel between points in Pennsylvania.

In November 1961 the Railroad filed with the PUC an application for leave to discontinue trains 638 and 645 in Pennsylvania. In support of the application the Railroad offered proof that it proposed to provide service for the majority of the passengers by re-

[1] Section 13a(1) is set forth in full in the Appendix to this motion.

routing a through sleeping car via Washington, that alternative methods of transportation were available for the small number of local passengers, and that the discontinuance of the two trains would result in substantial savings to the Railroad.[2]

The PUC denied this application on August 7, 1961. The Railroad did not seek judicial review of the denial in the state courts.

On January 25, 1962, the Railroad, acting pursuant to the provisions of Section 13a(1) of the Transportation Act of 1958 filed with the Interstate Commerce Commission notice of its intention to discontinue the operation of trains 638 and 645, on February 25, 1962. In accordance with the requirements of the statute the notice was filed 30 days in advance of the date that the proposed discontinuance would become effective. Notice of the proposed discontinuance was given to the public and to the PUC in the manner required by the statute. The Railroad also furnished the Interstate Commerce Commission and PUC information as to the patronage of the trains, alternative services, revenues, expenses and other information as required by the applicable Interstate Commerce Commission regulations.

Under the provisions of Section 13a(1) the Interstate Commerce Commission was authorized, in its

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[2] The figures referred to in footnote 3, page 16, of the Jurisdictional Statement do not accurately reflect the revenue situation. The revenue figure of $202,162 used in the footnote includes revenue which the Railroad expected to retain by reason of rerouting the through service. The Railroad's evidence before the PUC balanced the savings expected against the estimated loss of revenue, taking into account revenues to be retained from the rerouted through service, and showed that discontinuance of the two trains would result in savings of $55,000 a year.

discretion, at any time within the 30 day notice period to enter upon an investigation of the proposed discontinuance. The Interstate Commerce Commission was also authorized if it instituted an investigation, to suspend the proposed discontinuance, for a period not to exceed 4 months, by serving an order upon the Railroad at least 10 days prior to the date on which the discontinuance would otherwise have become effective.' If the Commission instituted an investigation it was authorized to require the continuance or restoration of service if it found, after hearing, that the service was required by the public convenience and necessity and would not unduly burden interstate or foreign commerce.

On February 8, 1962, the PUC sent to the Interstate Commerce Commission a formal protest against the proposed discontinuance.[3] The Commission, however, elected not to exercise its authority to institute an

[3] In its Jurisdictional Statement (p. 11) the PUC refers to the fact that the Interstate Commerce Commission issued a notice of its decision not to enter upon an investigation on February 8, 1962, the same date that the PUC sent its protest to the Commission. The fact is, however, that the Commission could have instituted an investigation into the proposed discontinuance at any time prior to February 25, 1962. If it had determined to institute an investigation it could have suspended the proposed discontinuance for a period of 4 months by a notice served upon the Railroad at any time prior to February 15, 1962. In its opinon dated July 9, 1962, the PUC said:

> "While we take exception to the premature decision of the Interstate Commerce Commission in these circumstances, we shall assume that it did consider our protest as well as the others, and that had it seen fit to rescind its order it would have done so between February 11 and February 15, 1962, during which period it did have the authority to order a suspension."

investigation or to suspend the proposed discontinuance. Consequently under the terms of the statute the Railroad was entitled to discontinue the two trains on February 25, 1962, and it did so.

On February 20, 1962, the PUC issued a rule requiring the Railroad to show cause why it should not maintain within the state the service provided by the two trains as required by the PUC order of August 7, 1961. The Railroad responded by contending that the trains had been discontinued in strict compliance with the provisions of Section 13a(1) of the Transportation Act of 1958 and that as a result the PUC no longer had authority to require the continuance of the service provided by the trains. The PUC rejected this contention on the ground that Section 13a(1) as so applied was unconstitutional and by an order dated July 9, 1962, again ordered the Railroad to continue the service provided by the two trains within the state of Pennsylvania. The Railroad did not seek judicial review of this order in the state courts.

On August 9, 1962, the Railroad filed its complaint in the court below seeking to enjoin the members of the PUC from enforcing the order of July 9, 1962, referred to above. The PUC defended primarily on the ground that Section 13a(1) was unconstitutional and also argued that its order of July 9, 1962 was *res judicata* and entitled to full faith and credit or, in the alternative, that the federal court should decline jurisdiction for reasons of comity. The case was heard by a three-judge district court convened pursuant to

28 U.S.C. 2281.[4] In an opinion filed on April 5, 1965, the court below rejected the contentions of the PUC and on the same date entered a judgment granting the injunctive relief prayed for.[5]

ARGUMENT

I. There Is No Substance in Appellants' Constitutional Arguments

Appellants contend that Section 13a(1) is unconstitutional as applied to the circumstances in this case because it "imposed supercession of a State Order over intrastate commerce upon the mere filing of notice by

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[4] In accordance with the provisions of 28 U.S.C. 2403 and Rule 24 of the Federal Rules of Civil Procedure the court below certified to the Attorney General of the United States that the case drew into question the constitutionality of Section 13a(1) and ordered that the United States, if it so desired, might intervene. In a communication dated September 2, 1964, the United States Department of Justice advised the clerk of the court below that in its opinion Section 13a(1) is constitutional and that it saw no reason to intervene (Jurisdictional Statement, p. 31).

[5] On April 20, 1962, members of a legislative committee of the Railroad Brotherhoods of the State of Pennsylvania brought suit in the court below seeking to set aside the action of the Interstate Commerce Commission in determining not to enter upon an investigation of the proposed discontinuance of trains 638 and 645 and also seeking a judgment forbidding the Railroad from discontinuing the service provided by the two trains. The plaintiffs attacked the constitutionality of Section 13a(1) on substantially the same grounds advanced by the PUC here. The case was heard by a three-judge court which held that the action of the Commission in refusing to enter upon an investigation of the proposed discontinuance was not subject to judicial review since it was not an order within the meaning of 28 U.S.C. 1336 and that Section 13a(1) is constitutional and does not deprive the state or any individual of any right which the Constitution of the United States guarantees. The court granted the motions of the defendants to dismiss. See Sludden v. United States, 211 F. Supp. 150, 154, 156 (M.D. Pa. 1962). No appeal was taken from that decision.

the Railroad without any findings of an undue burden on interstate commerce." (Jurisdictional Statement, pp. 4, 13-20). This argument raises no constitutional question that deserves plenary consideration by this Court.

Long ago this Court held in *Colorado* v. *United States,* 271 U.S. 153, 161-162, 165-166 (1926), that the Commerce Clause gives Congress the power to authorize railroads engaged in interstate transportation to abandon facilities or operations involved in such transportation and that the abandonment may extend to intrastate as well as interstate traffic. There the Court held, over the objection of a state, that Congress could constitutionally authorize a railroad engaged in interstate operations to abandon, as respects both intrastate and interstate traffic, a branch line lying wholly within the state.[6]

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[6] Appellants' reliance upon Texas v. Eastern Texas R.R., 258 U.S. 204, is misplaced. That case raises no doubt as to the power of Congress to authorize a railroad engaged in interstate transportation to abandon intrastate operations as the subsequent decision of this Court in Colorado v. United States, 271 U.S. 153, shows. In the Texas case the lines of the railroad involved lay entirely within the state of Texas and it was "being operated independently, and not as a branch of any railroad engaged in interstate commerce." Colorado v. United States, 271 U.S. at p. 169. Some interstate traffic moved over the intrastate lines and the Court held that Congress could constitutionally authorize abandonment of this interstate traffic. Once the railroad had been authorized to abandon the carriage of interstate traffic the remaining intrastate operations were not related in any way to interstate transportation. In Colorado v. United States, 271 U.S. at pp. 169-170, the case was distinguished on this ground. Any constitutional doubts that may be raised by the Texas case relate to the power of Congress to authorize abandonment of intrastate operations by a railroad which carries no interstate traffic and conducts no interstate transportation operations of any kind. No issue of that kind is presented here.

The constitutional authority sustained in *Colorado* v. *United States, supra,* was the authority that Congress exercised when it provided in Section 13a(1) that a carrier may discontinue the operation of a train operating from a point in any one state to a point in any other state. As the decision in that case shows this constitutional authority extends to the intrastate as well as to the interstate segments of the train's operations.[7]

Appellants argue, however, that Section 13a(1) cannot be constitutionally applied to the intrastate segment of an interstate railroad operation in the absence of a specific finding that continuance of service on the particular intrastate segment involved will burden interstate commerce. In substance, as appellants recognize (Jurisdictional Statement, pp. 16-17), this is an argument that Congress cannot directly exercise its constitutional power to regulate intrastate activities that affect interstate commerce by passing a statute of general application but must, as a matter of constitutional law, delegate to an administrative agency the authority to determine case-by-case whether particular intrastate activities do in fact affect interstate commerce.[8] There is no substance in this argument.

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[7] It is obvious that the power of Congress over interstate railroad operations would be frustrated if every state through which an interstate train passes could require the railroad to maintain or to restore service on the segment of the line within its borders.

[8] Section 13a(1) is a direct exercise of Congressional authority; it permits a carrier to act "of its own initiative and without any prior authorization, either by Congress or by the Commission", subject only to the authority of the Interstate Commerce Commission to investigate and to defer the discontinuance if in the exercise of its discretion it decides to do so. State of New Jersey

Section 13a(1) is a determination by Congress itself that the refusal of state authority to permit discontinuance of intrastate service provided by interstate trains is an activity that affects or burdens interstate commerce.[9] As *Colorado* v. *United States,* 271 U.S. 153, shows this determination relates to subject matter that is within the reach of the Congressional power to regulate interstate commerce. This being so the Congressional determination is sufficient and the Constitution does not require Congress itself to make, or to authorize an administrative agency to make, findings with respect to specific instances in which the statute may be applied. Only last term in *Katzenbach* v. *McClung,* 379 U.S. 294, 302-303, this Court rejected a contention that when Congress exercises its power to regulate interstate commerce it is required to provide for a "case-by-case determination" that particular activity to which the statute applies affects commerce. In *United States* v. *Darby,* 312 U.S. 100, 120-121, this Court rejected a similar contention and

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v. United States, 168 F. Supp. 324, 331, 333 (D. N.J. 1958), *affirmed,* 359 U.S. 27.

In the cited case New Jersey made an argument not essentially different from appellants' argument here. The New Jersey argument, which relied upon the Due Process Clause of the Fifth Amendment rather than upon any inherent limitation in the Commerce Clause, was that it was unconstitutional for Congress to permit a railroad to discontinue service without providing for a full hearing before the Interstate Commerce Commission. The court rejected the argument. (*Id.* at pp. 330-332)

[9] See H.R. No. 1922, 85th Congress, 2d Session, pp. 11-12; S.R. No. 1647, 85th Congress, 2d Session, p. 22; and Report No. 2274 (Conference Report), 85th Congress, 2d Session, pp. 13-14. See the discussion of this aspect of the legislative history in State of New Jersey v. United States, 168 F. Supp. 324, 336 (D. N.J. 1959), *affirmed,* 359 U.S. 27. See also Southern Railway Co. v. North Carolina, 376 U.S. 93, 101.

held that if Congress itself has determined that an activity affects commerce, "the only function of the courts is to determine whether the particular activity regulated or prohibited is within the reach of the federal power."[10] And when the nature of the Congressional determination is disclosed by the legislative history of the statute the fact that Congress did not embody the determination in specific findings in the statute itself does not impair its validity. See *Katzenbach* v. *McClung,* 379 U.S. 294, 304, *United States* v. *Carolene Products Co.,* 304 U.S. 144, 152.

The opinion of this Court in *Colorado* v. *United States,* 271 U.S. 153, itself answers appellants' argument. There the Interstate Commerce Commission, acting pursuant to Section 1, paragraphs 18-20, of the Interstate Commerce Act, had issued a certificate permitting the interstate carrier involved to abandon, both as to intrastate and interstate traffic, a branch line lying wholly within the state. Colorado attacked the Commission's order on the ground that it was not supported by essential findings and in that connection emphasized the absence of any finding that continuation of the instrastate aspect of the operation would result in discrimination against interstate commerce. This Court rejected that contention, holding that the sole test prescribed by the statute was that the abandonment be consistent with public necessity and convenience (271 U.S. at p. 168). The opinion makes it plain that findings were not a matter of constitutional

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[10] In the Darby case it was argued unsuccessfully that the Fair Labor Standards Act (29 U.S.C. 201, *et seq.*), was unconstitutional because it did not provide for an independent inquiry regarding the effect on interstate commerce of substandard wages in a particular business. See Katzenbach v. McClung, *supra,* at page 303.

necessity but were controlled entirely by the standards which Congress, in the exercise of its legislative discretion, had incorporated in the statute.[11]

Appellants make one additional constitutional argument which they rest on the Fifth Amendment. This argument is that Section 13a(1) violates the procedural requirements of the Due Process Clause because it gives the Railroad "unfettered discretion in deciding to abandon a line without any opportunity afforded the State for a hearing to contest the exercise of discretion" (Jurisdictional Statement, pp. 20-21).

Appellants have cited no decisions that provide even a shadow of support for the suggestion that the discontinuance of trains 638 and 645 pursuant to the provisions of Section 13a(1) infringed any rights of the PUC, the State of Pennsylvania or the citizens of Pennsylvania that are entitled to protection under the Fifth Amendment. Since Section 13a(1) imposes no limitation upon the right of appellants to resort to the courts their argument must be read as asserting that the statute is unconstitutional because it does not provide that appellants are entitled to a hearing before the Interstate Commerce Commission prior to discontinuance of service. Precisely this argument was made

[11] The Court said (271 U.S. at pp. 167-168):

> "While the constitutional basis of authority to issue the certificate of abandonment is the power of Congress to regulate interstate commerce, the Act does not make issuance of the certificate conditional upon a finding that continued operation will result in discrimination against interstate commerce, or that it will result in a denial of just compensation for the use of intrastate commerce of the property of the carrier within the State, or that it will result in a denial of such compensation for the property within the State used in commerce intrastate and interstate."

by New Jersey and rejected in *State of New Jersey* v. *United States,* 168 F. Supp. 324, 330-334, *affirmed,* 359 U.S. 27. Appellants have attempted to distinguish that decision on the ground that there no state order and no intrastate matter was involved (Jurisdictional Statement, pp. 18-19). Whatever relevance these differences might be thought to have in relation to the Commerce Clause they are of no significance under the Fifth Amendment. In relation to the power of Congress to regulate commerce the requirement of procedural due process imposed by the Fifth Amendment does not vary depending upon whether that power is exercised with respect to an interstate service as it was in New Jersey or with respect to the intrastate segment of interstate service as it has been here. Since denial of a full hearing before the Interstate Commerce Commission did not violate the Due Process Clause in the New Jersey case it cannot violate the Due Process Clause in the instant case. Appellants have shown no reason why this Court should depart from or overrule its prior decision.

II. There Is No Substance in Appellants' Contentions on Comity, Res Judicata and Full Faith and Credit

Appellants contend that the District Court should have declined jurisdiction for reasons of comity and remitted the Railroad to its remedies in the courts of Pennsylvania (Jurisdictional Statement, pp. 21-22).[12] Alternatively they argue that the decision of the PUC holding Section 13a(1) unconstitutional is conclusive

[12] In fact the time within which the Railroad might appeal the order entered by the PUC on July 9, 1962, has expired so that the Railroad now has no remedy in the state courts (Jurisdictional Statement, p. 23).

as against the Railroad by reason of the doctrines of *res judicata* and full faith and credit (*id.* at pp. 22-25).

These arguments are not entitled to serious consideration because they are inconsistent with both the purpose and the provisions of Section 13a(1). The terms of Section 13a(1) make it plain that Congress has preempted the regulatory field here involved and has explicitly deprived state agencies of the authority to act upon the subject matter of this litigation. The section provides that a notice of discontinuance of service may be filed by any carrier if its rights with respect to the discontinuance of service "are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State". It further provides that any carrier filing a notice may discontinue service pursuant to this notice, except as otherwise ordered by the Interstate Commerce Commission, the "laws or constitution of any State or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding." [13]

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[13] The effect of Section 13a(1) on state authority is made plain by the last two sentences of the section. They set forth certain conditions, not here applicable, in which it is provided that the statute "shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory agency of any State" and that the jurisdiction of the state "shall no longer be superseded". Since the specified conditions do not exist in the present case the effect of the section here is to supersede state authority.

In its opinion of July 9, 1962, the PUC itself said:

> "* * * we are impelled to the conclusion that Section 13(a)(1) of the Federal Transportation Act of 1958 does intend a supercession of all state law even as to the intrastate aspects of any given interstate train."

The legislative history of Section 13a(1), as well as its language, makes it clear that one of the purposes was to avoid delays in the discontinuance of burdensome passenger service which ensued when carriers were required to exhaust their remedies in the state courts.[14] To apply the doctrine of comity here would be inconsistent with this Congressional intent and would disregard an explicit Congressional direction.

Alabama Public Service Commission v. *Southern Railway Co.*, 341 U.S. 341, on which appellants primarily rely to support their comity argument is inapposite. That case was decided before the enactment of Section 13a(1) and has no application to the present situation in which the regulatory field has been preempted by Congressional action.[15]

Furthermore, in the Alabama case this Court described the controversy as one in which a federal court had been asked to intervene in resolving "an essentially local problem" that turned upon "predominately local factors" (341 U.S. at pp. 347, 349).[16] In contrast the sole issue in this case is the constitutionality of Sec-

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[14] See S.R. No. 1647, 85th Congress, 2d Session, pp. 21-22, H.R. No. 1922, 85th Congress, 2d Session, p. 12. See also footnote 9, p. 9, *supra*.

[15] In that case the Court noted that there was no federal regulatory statute that impaired "the primary authority" of the state to deal with the discontinuance of passenger service there involved (341 U.S. 341, 345-346). Here Congress has enacted a statute for the explicit purpose of permitting the discontinuance of service provided by interstate trains without resort to state authority.

[16] This Court pointed out that the posture of the case made it impossible to consider "any impact the order of Alabama Public Service Commission might have on interstate commerce." (341 U.S. at pp. 346-347; n. 9)

tion 13a(1) of the Interstate Commerce Act. This case does not turn on disputed issues of fact, on the construction of applicable state law, or on any of the other considerations that have led this Court in the past to decline jurisdiction for reasons of comity.

In *California Commission* v. *United States,* 355 U.S. 534, 539, this Court declined to apply the doctrine of comity in a case that involved the constitutionality of a state statute which would have deprived the federal government of the right conferred upon it by Section 22 of the Interstate Commerce Act to negotiate with common carriers special rates for the shipment of Government property. This Court said (355 U.S. at p. 539):

> "That issue is a constitutional one that the Commission can hardly be expected to entertain."

The fact that the PUC in this case has undertaken to declare a federal statute unconstitutional does not make the statement of the Court any the less applicable.

Appellants stand in no better position when they invoke the doctrines of *res judicata* and full faith and credit. Those doctrines are not applied in a federal court to a state decision if the subject matter of the litigation has been preempted by federal legislation. See *Durfee* v. *Duke,* 375 U.S. 106, 114, *Kalb* v. *Feuerstein,* 308 U.S. 433, 439-440.[17] And see also *United States*

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[17] Appellants attempt to distinguish Kalb v. Feuerstein, *supra,* on the ground that there the state court attempted to decide a matter *after* the bankruptcy court obtained jurisdiction (Jurisdictional Statement, p. 24). Appellants do not attempt to explain why this asserted distinction has any relevance to the question of federal preemption. In any event, the appellants are wrong on the facts. In the Kalb case the state foreclosure proceeding was begun before the petition in bankruptcy had been filed and approved. See 308 U.S. at pp. 435-36, n. 2.

v. *United States Fidelity Co.*, 309 U.S. 506, 514. As we have pointed out above, Section 13a(1) preempts the regulatory field here involved and deprives the state agencies of authority to act with respect to the discontinuance of intrastate service provided by interstate trains. To treat the decision of the PUC on the constitutionality of Section 13a(1) as *res judicata* and as entitled to full faith and credit would frustrate the provisions of the statute and nullify the public policy declared in those provisions.

Even apart from the question of preemption there is no merit in appellants' contention that the decision of a state administrative agency on the constitutionality of a federal statute can operate as *res judicata* or is entitled to full faith and credit in a federal court. Appellants cite no authority that supports this contention. In a line of decisions extending over 75 years this Court has held that one aggrieved by the order of a state administrative agency, may, in appropriate circumstances, resort to the federal courts for protection of a right arising under the Constitution and laws of the United States. There is no suggestion in any of these cases that the decision of a state administrative agency on a question of federal constitutional law could by reason of the doctrines of *res judicata* and full faith and credit operate as a bar to the relief sought. See for example, *Prentis* v. *Atlantic Coast Line Co.*, 211 U.S. 210, 227, *Bacon* v. *Rutland R.R. Co.*, 232 U.S. 134, *Prendergast* v. *N. Y. Telephone Co.*, 262 U.S. 43, *St. Louis-San Francisco Ry. Co.* v. *Alabama Public Service Commission*, 279 U.S. 560.[18] And it

[18] In these cases the Court treated the question of *res judicata* as one that could arise only as a result of a decision by a state court i nthe exercise of its judicial function. See, for example, Prentis v. Atlantic Coast Line Co., *supra*, and also Railroad Commission v. Duluth Street Ry. Co., 273 U.S. 625, 627-628.

is significant that in *Alabama Public Service Commission* v. *Southern Railway Co.*, 341 U.S. 341, the Court did not base its decision on *res judicata* or full faith and credit, but rather held that the District Court should have declined jurisdiction "as a matter of sound equitable discretion" (*id.* at p. 350). There is no intimation in the opinion in that case that if the Court had decided, in the exercise of its equitable discretion, to accept jurisdiction, it would have regarded itself as bound by the decision of the Alabama Public Service Commission.

CONCLUSION

For the foregoing reasons the judgment below should be affirmed.

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APPENDIX

DISCONTINUANCE OR CHANGE OF CERTAIN OPERATIONS OR SERVICES

SEC. 13a. [*August 12, 1958.*] [*49 U. S. C. § 13a.*] (1) A carrier or carriers subject to this part, if their rights with respect to the discontinuance or change, in whole or in part, of the operation or service of any train or ferry operating from a point in one State to a point in any other State or in the District of Columbia, or from a point in the District of Columbia to a point in any State, are subject to any provision of the constitution or statutes of any State or any regulation or order of (or are the subject of any proceeding pending before) any court or an administrative or regulatory agency of any State, may, but shall not be required to, file with the Commission, and upon such filing shall mail to the Governor of each State in which such train or ferry is operated, and post in every station, depot or other facility served thereby, notice at least thirty days in advance of any such proposed discontinuance or change. The carrier or carriers filing such notice may discontinue or change any such operation or service pursuant to such notice except as otherwise ordered by the Commission pursuant to this paragraph, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any court or State authority to the contrary notwithstanding. Upon the filing of such notice the Commission shall have authority during said thirty days' notice period, either upon complaint or upon its own initiative without complaint, to enter upon an investigation of the proposed discontinuance or change. Upon the institution of such investigation, the Commission, by order served upon the carrier or carriers affected thereby at least ten days prior to the day on which such discontinuance or change would otherwise become effective, may require such train or ferry to be continued in operation or service, in whole or in part, pending hearing and decision in such investigation, but not for a longer period than four months

beyond the date when such discontinuance or change would otherwise have become effective. If, after hearing in such investigation, whether concluded before or after such discontinuance or change has become effective, the Commission finds that the operation or service of such train or ferry is required by public convenience and necessity and will not unduly burden interstate or foreign commerce, the Commission may by order require the continuance or restoration of operation or service of such train or ferry, in whole or in part, for a period not to exceed one year from the date of such order. The provisions of this paragraph shall not supersede the laws of any State or the orders or regulations of any administrative or regulatory body of any State applicable to such discontinuance or change unless notice as in this paragraph provided is filed with the Commission. On the expiration of an order by the Commission after such investigation requiring the continuance or restoration of operation or service, the jurisdiction of any State as to such discontinuance or change shall no longer be superseded unless the procedure provided by this paragraph shall again be invoked by the carrier or carriers.